

48A C.J.S. Judges § 290

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

b. Relationship

§ 290. Criminal cases

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The provisions disqualifying a judge on the ground of relationship to a party generally apply equally to civil and criminal trials.¹ A relationship between a judge and a victim may be relevant to the issue of disqualification and should therefore be revealed on the record.² Relationship to the deceased within the prescribed degree disqualifies a judge to try the case of one charged with murder of such deceased.³ However, the recusal of a trial judge is not required simply on the basis that the judge knew the victim or the victim's family.⁴

Where a judge's child is a defendant in a criminal proceeding subject to the authority of the judge's court, the code of judicial conduct requires the judge to disqualify him- or herself because under such circumstances, the judge's impartiality might reasonably be questioned.⁵

CUMULATIVE SUPPLEMENT

Cases:

Where a defendant is charged with trying to blow up or otherwise damage a federal courthouse, judges residing in that courthouse at the time of the alleged plot and judges belonging to the court based in that courthouse must recuse from cases involving that defendant because such judges were potential victims of the alleged attack. 28 U.S.C.A. § 455(a). *In re Moody*, 755 F.3d 891 (11th Cir. 2014).

Defendant failed to meet his burden to overcome the presumption of impartiality on the part of judge, following defendant's motion for recusal in prosecution for predatory criminal sexual assault, though judge previously acted in lead role prosecuting defendant on prior sexual abuse allegations and defendant alleged that judge had personal knowledge of evidentiary facts from prior case; judge stated he had nothing more than a vague recollection of outcome of prior case against defendant, and defendant offered nothing more than speculation and conjecture that judge's work nearly 20 years prior in separate case involving different victim him would prejudice him in defendant's trial. 720 Ill. Comp. Stat. Ann. 5/11-1.40(a)(1); Ill. Sup. Ct. R. 63(C). *People v. Hinthorn*, 438 Ill. Dec. 368, 146 N.E.3d 122 (App. Ct. 4th Dist. 2019), appeal denied, 435 Ill. Dec. 701, 140 N.E.3d 259 (Ill. 2020).

The appearance of bias, and the probability of actual bias that would rise to a level too high to be constitutionally tolerable, dictated recusal of trial judge in capital murder case; trial judge had a longtime working relationship with victim's widow, a court employee who was not only the victim's widow but also was designated as a penalty phase witness, the judge had a social media relationship with the widow that the judge initially denied in a formal opinion, but later admitted under oath, and the judge had taken steps barred by the Code of Criminal Procedure which, if not corrected by the appellate court, would have thwarted another judge from considering recusal. *State v. Daigle*, 241 So. 3d 999 (La. 2018).

[END OF SUPPLEMENT]

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Footnotes

1 Ind.—*Scott v. Scott*, 140 Ind. App. 320, 209 N.E.2d 49 (1965).

Tex.—*Mims v. State*, 112 Tex. Crim. 176, 15 S.W.2d 628 (1929).

2 Nev.—*Rippo v. State*, 113 Nev. 1239, 946 P.2d 1017 (1997).

Stepparent/stepchild

The trial judge's impartiality could reasonably be questioned, in defendant's trial for burglary and theft, due to the judge's former step-parent/step-child relationship with the victim, and thus, the judge's recusal was obligatory where the victim lived under the same roof as the stepfather from the time she was a young child until the divorce eight years prior to the trial.

Tenn.—*Pannell v. State*, 71 S.W.3d 720 (Tenn. Crim. App. 2001).

3 Ark.—*Byler v. State*, 210 Ark. 790, 197 S.W.2d 748 (1946).

Tex.—*Duncan v. State*, 103 Tex. Crim. 293, 280 S.W. 216 (1925).

4 La.—*State v. Robinson*, 22 So. 3d 1064 (La. Ct. App. 2d Cir. 2009).

5 Ind.—*In re Van Rider*, 715 N.E.2d 402 (Ind. 1999).